



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF A PETITION FOR AN)
ORDER AUTHORIZING TOUCH)
AMERICA, INC. TO PROVIDE)
INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES)
THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE00090690

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated September 7, 2000, Touch America, Inc. (Petitioner or TA) filed a petition with the Board of Public Utilities (Board) requesting authority to provide interexchange services throughout the State of New Jersey. In addition, TA responded to a Staff questionnaire by letter dated May 10, 2001 and to Staff interrogatories by letter dated August 2, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Montana on July 13, 1983, as Telecommunications Resources, Inc. On May 5, 1992, the Certificate of Incorporation was amended to change the name to TRI Touch America, Inc. Finally, on November 21, 1995, the name was changed to Touch America, Inc. Petitioner's principal offices are located at 130 East Main Street, Butte, Montana 59701. Petition at 2. TA is a wholly owned subsidiary of Entech, Inc., a Montana corporation, which, in turn, is a wholly owned subsidiary of The Montana Power Company. Ibid.

Petitioner submitted copies of its articles of incorporation, Montana Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Id. at 2, Exhibits 1 and 2, August 2, 2001 letter. According to the petition, TA intends to operate as a provider of facilities-based and resold long distance services throughout the entire State of New Jersey. Id. at 3. Petitioner advised that TA is currently certified to provide facilities-based local exchange service in Rhode Island and resold local exchange services in Montana, North Carolina, Rhode Island, Utah and Wisconsin. In addition, it is authorized to provide facilities-based and resold interexchange services in all states except Alaska, Hawaii, Maryland, New Jersey and North Carolina. TA advised that it has not been denied authority to provide telecommunications services in any state. In addition, TA indicated that it has no pending civil, criminal or administrative actions against it. May 10, 2001 letter.

TA advised that it is not currently negotiating any interconnection agreements. May 10, 2001 letter.

TA initially proposes to offer services only to other carriers and national business accounts, adding large and small business and residential accounts at a later date. TA intends to offer a full line of long distance services as well as dedicated voice, data, video and frame relay services. *Id.* at 3, May 10, 2001 letter.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3 and 14:10-1.16, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested permission, in the interest of efficiency and to prevent undue burden, to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petitioner also requests permission to keep all books, records, documents and other writings incident to the conduct of business of Petitioner in the State of New Jersey at Petitioner's corporate offices in Butte, Montana. August 2, 2001 letter. Petitioner stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. August 2, 2001 letter.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey and will provide New Jersey customers with access to new products and service choices. Petition at 1.

With regard to its managerial qualifications, TA stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. *Id.* at 4. Petitioner submitted the professional biographies of its key personnel who, according to TA, are well qualified to execute its business plans, and have extensive and managerial and technical experience in telecommunications industry. *Id.* at 5, Exhibit 4.

Petitioner submitted the audited financial statements of the nationwide corporation, Touch America, Inc., for the year ending December 31, 1999. as evidence of sufficient financing. *Id.* at 8; Exhibit 5. The statements indicate that TA's 1999 revenues exceeded \$84 million, resulting in operating income of over \$35 million. *Id.* at 8-9. Petitioner will be required to file pro forma financials for its New Jersey operations prior to approval of a tariff. *Id.* at 6, Exhibit 5. By letter dated October 10, 2001, the Division of the Ratepayer Advocate recommended approval of the petition.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability to any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewing Touch America's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide interexchange telecommunications services in New Jersey subject to approval of its tariffs and submission of its own pro forma financial statements for each of the first two years of New Jersey operations. N.J.A.C. 14:1-5.11(a)5. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey.

Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 10/15/01

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY